

**In The Matter Of:**  
*AVL Powertrain Engineering, Inc. v.*  
*Fairbanks Morse Engine*

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*Deposition of Theodore W. Niehaus*  
*November 18, 2015*

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*Min-U-Script® with Word Index*

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF WISCONSIN

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AVL POWERTRAIN ENGINEERING, INC.,

Plaintiff,

v. Case No. 3:14-cv-877

FAIRBANKS MORSE ENGINE,  
a division of COLTEC INDUSTRIES, INC.,

Defendant.

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DEPOSITION

THEODORE W. NIEHAUS

Madison, Wisconsin  
November 18, 2015

Sarah Finley Pelletter, RPR  
Registered Professional Reporter

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1 DEPOSITION of THEODORE W. NIEHAUS, a witness  
2 of lawful age, taken on behalf of the Plaintiff,  
3 wherein AVL Powertrain Engineering, Inc. is Plaintiff,  
4 and Fairbanks Morse Engine is Defendant, pending in  
5 the United States District Court for the Western  
6 District of Wisconsin, pursuant to notice, before  
7 Sarah Finley Pelletter, a Registered Professional  
8 Reporter and Notary Public in and for the State of  
9 Wisconsin at the offices of Whyte Hirschboeck Dudek,  
10 S.C., Attorneys at Law, 33 East Main Street,  
11 Suite 300, in the City of Madison, County of Dane,  
12 and State of Wisconsin, on the 18th day of  
13 November 2015, commencing at 3:52 in the afternoon.  
14  
15  
16 A P P E A R A N C E S  
17 FRED K. HERRMANN, Attorney,  
18 for KERR, RUSSELL AND WEBER, PLC, Attorneys at Law,  
19 500 Woodward Avenue, Suite 2500, Detroit,  
20 Michigan 48226-3427, appearing on behalf of  
21 the Plaintiff.  
22 R. STEVEN DeGEORGE, Attorney,  
23 for ROBINSON BRADSHAW & HINSON, P.A., Attorneys at Law,  
24 101 North Tryon Street, Suite 1900, Charlotte,  
25 North Carolina 28246, appearing on behalf of  
the Defendant.

Also present: Lori A. Brown, Corporate Government  
Compliance Officer at AVL

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1 THEODORE W. NIEHAUS,  
2 called as a witness, being first duly sworn,  
3 testified on oath as follows:  
4  
5 EXAMINATION  
6 By Mr. Herrmann:  
7 Q Good afternoon, Mr. Niehaus. Could you state your  
8 full name for the record, please.  
9 A Theodore Wilhelm Niehaus.  
10 Q You go by Ted?  
11 A I do.  
12 Q Have you ever given a deposition before?  
13 A No, I have not.  
14 Q Being it's a new experience for you, I'll take a  
15 minute to give you some guidelines. Fair enough?  
16 A Okay.  
17 Q And you may have already heard these from your  
18 counsel, but I'll ask questions, you provide  
19 answers. If at any time you don't understand a  
20 question I've asked, by all means please tell me  
21 that, and I'll do my best to rephrase it, so that  
22 we're accurately communicating. Fair enough?  
23 A Okay.  
24 Q If at any time you need to take a break, that's  
25 fine. Just let us know. Speak up. I'm happy to

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1 accommodate you. Only exception would be with a  
 2 question pending, we need to get the answer to the  
 3 question first.  
 4 A That's fine.  
 5 Q The only exception to that would be some issue of  
 6 attorney-client privilege that you may need to  
 7 confer with counsel about, but I know Mr. DeGeorge  
 8 will keep you straight on that. Okay?  
 9 A Okay.  
 10 Q I may ask questions that may involve  
 11 communications you have had with lawyers for FME,  
 12 and I know Mr. DeGeorge will guide you as well,  
 13 but I don't need to hear about conversations  
 14 you've had with lawyers.  
 15 A Okay.  
 16 Q But I might ask you your understanding or whether  
 17 or not you had a meeting on a particular day, and  
 18 you can tell me that information. Fair enough?  
 19 A Okay.  
 20 Q Our court reporter here will strike us down if we  
 21 talk over each other.  
 22 A Okay.  
 23 Q Okay? The reason for that is she has to take down  
 24 everything we say. And if you and I are talking  
 25 at the same time, that becomes problematic.

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1 A All right.  
 2 Q Sometimes I pause with my questions, and I  
 3 apologize in advance because sometimes that  
 4 triggers an early response from you. So this is  
 5 equal, and we'll do the best we can. Okay?  
 6 A All right.  
 7 Q All right. Could you give me, first, your  
 8 educational background, taking me from high school  
 9 to the present?  
 10 A Yes. I was -- I attended high school at  
 11 Woodstock School in Musoorie, UP, India. I was  
 12 there for two years, for the last two years of  
 13 high school. I then went to Spartan School of  
 14 Aeronautics in Tulsa, Oklahoma, where I got my  
 15 pilot's license and my A&P mechanics license.  
 16 After that, I went to the University of Tulsa, in  
 17 Tulsa, Oklahoma, and I got my bachelor of science  
 18 degree in mechanical engineering.  
 19 Q You moved pretty quickly there, so forgive me if I  
 20 need to retrace some steps, but does that  
 21 summarize the extent of your higher education?  
 22 A Yes.  
 23 Q So Woodstock School, did you say that was in  
 24 India?  
 25 A Yes, sir.

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1 Q What took you to India?  
 2 A My parents lived in Saudi Arabia, and they worked  
 3 for the Arabian American Oil Company. After ninth  
 4 grade, all students were sent away to boarding  
 5 school someplace in the world.  
 6 I did not mention that I went to Wentworth  
 7 Military Academy for one year, for tenth grade,  
 8 and then after that, my parents moved me to  
 9 Woodstock.  
 10 Q Do you have any citizenship other than U.S.?  
 11 A No, I don't.  
 12 Q And then you went to Spartan --  
 13 A Spartan School of Aeronautics.  
 14 Q And where is that located, I'm sorry?  
 15 A Tulsa, Oklahoma.  
 16 Q And you gained a pilot's license there?  
 17 A Private pilot, yes.  
 18 Q Have you maintained that license?  
 19 A It never expires. It just requires  
 20 recertification.  
 21 Q And you mentioned A&P mechanic?  
 22 A Yes. Airframe and power plant mechanic.  
 23 Q How long was that course of study?  
 24 A Eighteen months.  
 25 Q And that included the A&P mechanic and the flying,

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1 or are they separate?  
 2 A They're separate. The flying was three months.  
 3 The A&P mechanic was 18.  
 4 Q Have you ever since then flown for anything other  
 5 than your personal pleasure?  
 6 A No.  
 7 Q Have you ever used your skills that you gained as  
 8 an A&P mechanic other than perhaps on your own  
 9 airplane?  
 10 A No.  
 11 Q You've never been employed --  
 12 A Actually, I'm sorry. Yes, I have. I was employed  
 13 at Nuss Aircraft Repair at Riverside Airport in  
 14 Jenks, Oklahoma. And then I was also employed at  
 15 Tulsair Beechcraft at Tulsa International Airport.  
 16 Q What years were those employments?  
 17 A That would have been '89, I think, for Nuss --  
 18 excuse me -- '79 for Nuss, and it would have been  
 19 '80 and '81, in that area, for Tulsair Beechcraft.  
 20 Q And in those roles you performed mechanic duties  
 21 for airframes?  
 22 A Correct.  
 23 Q So you got out of the Spartan School sometime  
 24 prior to '79; is that accurate?  
 25 A I don't remember exactly. It would have been

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1     sometime in -- it probably would have been  
 2     sometime '79 or '80, somewhere in there.  
 3 Q     And then, when did you enroll at -- it's  
 4     University of Tulsa, correct?  
 5 A     University of Tulsa. 1983.  
 6 Q     And when did you graduate?  
 7 A     1989.  
 8 Q     Bachelor of science in mechanical engineering,  
 9     right?  
 10 A     Yes.  
 11 Q     Did you have any minor concentrations?  
 12 A     No.  
 13 Q     Since your B.S. in mechanical engineering, have  
 14     you had any training in any field that resulted in  
 15     any type of professional license or certification?  
 16 A     No.  
 17 Q     Do you have any training in environmental  
 18     compliance issues?  
 19 A     I do not.  
 20 Q     Was Nuss your first employment leaving Spartan --  
 21     after Spartan?  
 22 A     After Spartan, yes.  
 23 Q     And then you went from Nuss directly to the --  
 24 A     To Tulsair Beechcraft.  
 25 Q     And after Tulsa Beechcraft, where did you go?

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1 A     Then I went to -- went back to school. Went to  
 2     the University of Tulsa.  
 3 Q     Ah. Got it. And in '89, after getting out of  
 4     Tulsa, what was your first employment after that?  
 5 A     I worked for Universities Research Association. I  
 6     contracted with the Department of Energy, and it  
 7     was the Superconducting Super Collider project in  
 8     Dallas.  
 9 Q     How long did you stay on that project?  
 10 A     I was there for five years.  
 11 Q     And just in general, what duties did you perform  
 12     while there?  
 13 A     I was a field engineer for the cryogenics  
 14     department installing helium refrigeration  
 15     systems.  
 16 Q     So five years, are we at 1988?  
 17 A     No. This is starting -- this would be starting in  
 18     1989.  
 19 Q     Oh, I gotcha. Okay.  
 20 A     So it would be --  
 21 Q     '94?  
 22 A     -- 1994. Actually, I think it was '95, actually,  
 23     when they finally shut it down.  
 24 Q     And then where did you go?  
 25 A     And then I came up here. And I was unemployed for

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1     six months.  
 2 Q     And then did you start at FME after that?  
 3 A     No. I was a contractor and contracted at a number  
 4     of different locations up until the year 2000,  
 5     when I took a job, permanent job at Environmental  
 6     Dynamics Corporation.  
 7 Q     What did your contractor work consist of?  
 8 A     Mechanical design, primarily.  
 9 Q     Any particular industry?  
 10 A     I went all over the place. I worked for -- I  
 11     worked for Environmental Dynamics. Then I worked  
 12     for Gardner Disc Grinders and Abrasives. Then I  
 13     worked for -- and then I worked for  
 14     Amerock Corporation, and then I worked for  
 15     General Motors, and then I worked for Beloit  
 16     Corporation.  
 17 Q     And were these all as an independent contractor?  
 18 A     Yes. Yes. So I worked for Van Marter &  
 19     Associates, and they placed me at these different  
 20     locations.  
 21 Q     So when your contracting ended, did you then go  
 22     permanently to Enviro Dynamics?  
 23 A     Yes.  
 24 Q     So you became a W-2 employee there?  
 25 A     Yes.

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1 Q     And how long did you stay with Enviro?  
 2 A     Until 2003.  
 3 Q     And then --  
 4 A     And the company folded, and I worked for -- I went  
 5     back to contracting again, and I worked for -- I  
 6     was placed at Ecolab in South Beloit as a  
 7     mechanical design supervisor. And then after  
 8     that, after they let me go from there, then I was  
 9     placed at Fairbanks Morse in November 2004.  
 10 Q     So 2004 was your first contact with --  
 11 A     Yes.  
 12 Q     -- FME?  
 13 A     Yes.  
 14 Q     And if I say FME, will you understand that's  
 15     Fairbanks Morse Engine in Beloit?  
 16 A     Yes.  
 17 Q     We'll also refer to AVL today. Can we have the  
 18     understanding that is AVL Powertrain Engineering,  
 19     Inc., the plaintiff in this case?  
 20 A     Yes.  
 21 Q     So do I have it right that for a period of time  
 22     you were doing contract work for FME?  
 23 A     Yes. That's correct.  
 24 Q     And what were those years, from '04 until --  
 25 A     That was actually from November of 2004 through

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1 April of 2005. I was hired by Fairbanks on  
 2 April 6, 2005.  
 3 Q During your contract work for FME, what duties  
 4 were you performing?  
 5 A I was a test stand designer. I performed  
 6 mechanical design for actually test stand 7 in the  
 7 OP building.  
 8 Q Is that the only test stand you worked on during  
 9 your contracting period?  
 10 A Yes.  
 11 Q Tell me about the design work you did for test  
 12 stand 7.  
 13 A I designed the intake and exhaust -- intake  
 14 ducting, the intake piping, the exhaust ducting,  
 15 all the liquid piping systems, the dynamometer  
 16 mounting, the engine mounting, the platforming,  
 17 the fuel systems. Any fluid system, hydrocarbon  
 18 system, cooling system, I designed it and put it  
 19 in place.  
 20 Q And when did you begin that work?  
 21 A I began that work in November 2004.  
 22 Q So immediately when you contracted in, you started  
 23 that work?  
 24 A Yes.  
 25 Q What was the condition of test stand 7 at the time

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1 you started?  
 2 A The building was basically abandoned, and it was  
 3 very -- it was a pretty rough building. It was  
 4 very unused. So we had to do a lot of cleanup and  
 5 throwing out of things and moving things out of  
 6 the way.  
 7 Q You needed to do that to do the work that you did  
 8 on test stand 7?  
 9 A Yes.  
 10 Q Did you do any of that cleanup work elsewhere in  
 11 the OP building at that time?  
 12 A No.  
 13 Q Did you have an understanding at that time of why  
 14 you were doing the design work?  
 15 A Yes.  
 16 Q And what was that?  
 17 A It was to test the LC6 engine series.  
 18 Q Did you have an understanding whether test stand 7  
 19 and the work you were doing for it would be the  
 20 first such test of the LC6 engine at FME?  
 21 A Yes.  
 22 Q And what was your understanding of when the first  
 23 LC6 engine would be tested on test stand 7?  
 24 A That was a moving target, actually. It was  
 25 scheduled to be early in 2005, I believe, but it

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1 kept slipping throughout the year. I don't know  
 2 what the first engine actually went on. I don't  
 3 remember.  
 4 Q But the first target you remember was early 2005?  
 5 A Yes.  
 6 Q That's when it was, at the time, expected that a  
 7 PA6B engine would be put on that stand?  
 8 A That was my understanding.  
 9 Q All right. And what was your understanding of the  
 10 testing that would be required for a PA6B engine  
 11 on test stand 7?  
 12 A The first test of any engine line is a, what they  
 13 call a first article test or a FAT test, which  
 14 typically requires 1,000 hours of operation at  
 15 full power, as well as operating at various  
 16 different load points.  
 17 Q And would first article test apply only to the  
 18 first engine in a series?  
 19 A Usually. Yes.  
 20 Q What would be the conditions that would cause  
 21 later engines in a series to also undergo FAT  
 22 testing?  
 23 A Usually it doesn't happen. It would have to be  
 24 some major change to the engine.  
 25 Q Do you have any understanding whether the PA6B

Page 16

1 engine ever underwent any such change that would  
 2 require additional FAT testing?  
 3 A It did not.  
 4 Q Was the first engine in the series that FME  
 5 tested, did that engine undergo FAT testing?  
 6 A Yes.  
 7 Q When did that occur?  
 8 A It was after it hit the test stand, but I don't  
 9 know when that date was.  
 10 Q All right. Do you know if the first PA6B engine  
 11 was put on the test stand in 2012?  
 12 A No. It was much earlier than that. The first --  
 13 it was -- the likelihood is is that the first PA6  
 14 engine was put on the test stand in 2006.  
 15 Q And that would have been for FAT testing?  
 16 A Yes.  
 17 Q If I wanted to search records to confirm that,  
 18 where would I look?  
 19 A You'd probably look in the program management  
 20 documents for the LCS contract.  
 21 Q And where would they reside at FME?  
 22 A That would be up in program management.  
 23 Q After you did the design work on test stand 7 to  
 24 support the PA6B, did you participate in any  
 25 actual testing of the PA6B?



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1 A I was there to support testing. So I did not  
 2 actually do any testing of the engine, but  
 3 verification of all the systems were operational  
 4 as they should be, troubleshooting where it was  
 5 necessary, and then repairing the problems that we  
 6 found.  
 7 Q Would I be making a correct assumption if the way  
 8 it worked was the people actually testing the  
 9 engine, if something went wrong that needed your  
 10 attention, they would contact you?  
 11 A Correct.  
 12 Q Did you for any reason on your own keep up with  
 13 the status of testing of the PA6B without being so  
 14 notified?  
 15 A Yes. I usually kept up on the status on most  
 16 engines being tested at Fairbanks.  
 17 Q And to what extent would you keep up on the  
 18 status?  
 19 A I would drop by the test stand once or twice a  
 20 day.  
 21 Q Who are the people who were responsible for the  
 22 FAT test in, and I know you don't remember  
 23 exactly, but roughly 2006?  
 24 A Howard Koth was the engineer in charge of the  
 25 testing. I think he would be the point person.

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1 Q Anyone else you recall?  
 2 A No. And now that I think about it, I was still a  
 3 contractor when the first engine was on the test  
 4 stand. So that would actually have been in 2005  
 5 when it went on. Because I remember -- I do  
 6 remember a situation where I was -- I stayed over  
 7 without permission.  
 8 Q You stayed over without permission?  
 9 A I stayed on the clock without getting approval  
 10 because there was a problem that needed to be  
 11 solved.  
 12 Q I see. And then you were hired full-time as a W-2  
 13 employee April 6 of 2005?  
 14 A Correct.  
 15 Q Did your duties change when you were hired, or did  
 16 it just work out that you kept the same duties but  
 17 became a W-2 employee?  
 18 A My duties expanded. They were still primarily  
 19 test stand design, but then I was hired into the  
 20 facilities department. And so then I was  
 21 started -- I began to receive responsibilities for  
 22 various pieces of equipment and systems around the  
 23 plant.  
 24 Q And what were those systems over which you assumed  
 25 some responsibilities?

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1 A Overhead cranes and lifting, sanitary sewer  
 2 systems, storm sewer systems, fire piping systems  
 3 over the years -- so this would be kind of a  
 4 progression over years -- building systems, HVAC,  
 5 fire alarm systems. Pretty much any mechanical  
 6 system that the plant needed to operate I was at  
 7 some point ultimately in charge of.  
 8 Q And did your duties encompass the entirety of the  
 9 FME plant at Beloit --  
 10 A Correct.  
 11 Q -- not just the OP?  
 12 A Yes. The entire plant.  
 13 Q Returning to the FAT testing of the first PA6B,  
 14 you said that's the initial test, right?  
 15 A That is correct.  
 16 Q And that normally applies only to the first engine  
 17 in a series, right?  
 18 A Uh-huh.  
 19 Q So what's the next test that the engine that went  
 20 through the FAT test proceeded to?  
 21 A Once the FAT test is done, that engine has been  
 22 completed. Subsequent engines are given what is  
 23 typically called a hot test, where they're  
 24 started -- they're gone -- they go through a  
 25 wear-in process, at which point they are run

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1 through a series of load steps in order to prove  
 2 power at various loads. The engine is opened up.  
 3 The bearings are inspected. The clearances are  
 4 inspected. They're closed back up. They're run  
 5 again. And then after a period of maybe 30 hours  
 6 of running, the engine is completed and  
 7 disassembled and taken off the test stand.  
 8 Q The 30 hours of running, is that total time for  
 9 that engine?  
 10 A That's -- that would be the total time for the  
 11 engine. I'm not -- I wouldn't say that that is  
 12 exactly how many hours any engine -- any  
 13 particular engine runs. You know, there is a  
 14 short duration of time that the engines would run.  
 15 Q But the testing protocol at that stage is 30 hours  
 16 of run time?  
 17 A Roughly. Someplace in there.  
 18 Q Are the dynamics of the engine changed during that  
 19 30 hours such that the amount of fuel being burned  
 20 by it alternates --  
 21 A No.  
 22 Q -- or changes?  
 23 A No. Fuel burn -- fuel usage will be the same at  
 24 any given engine power. So from the FAT test to a  
 25 hot test, if it's running at 50 percent power,

Page 21

1 fuel consumption will be the same.  
 2 Q And the 30 hours, that's total run time of the  
 3 tested engine, right?  
 4 A Yes. But I wouldn't -- but not being an engine  
 5 guy, being more a facilities guy, I would say -- I  
 6 would not use 30 hours as gospel saying that this  
 7 is -- all engines were run for 30 hours. It could  
 8 be more; it could be less.  
 9 Q But whatever that number is, that's the run time  
 10 of the engine, right?  
 11 A Correct.  
 12 Q Not the total time it's on the stand?  
 13 A It would be the run time of the engine. Right.  
 14 Q So how long would the engine need to be on the  
 15 stand to accomplish the approximately 30 hours of  
 16 testing?  
 17 A Three weeks to a month.  
 18 Q And then that would complete the testing for that  
 19 particular engine?  
 20 A Yes.  
 21 Q And then what would happen to it?  
 22 A Then the engine -- all the systems would be  
 23 disconnected from the engine, and it would be  
 24 lifted off and sent to paint and then shipped.  
 25 Q How long would it take to connect an engine to

Page 22

1 test stand 7 --  
 2 A About two weeks.  
 3 Q -- in order for it to be tested?  
 4 A About two weeks.  
 5 Q And then in order for it to be decoupled, how long  
 6 would that take?  
 7 A Approximately a week.  
 8 Q So after the first FAT test in 2005, what was the  
 9 next engine to come in the door for testing?  
 10 A It would have been the second engine in the series  
 11 for the first LCS ship.  
 12 Q What was the first LCS ship?  
 13 A The LCS ship, LCS standing for littoral combat  
 14 ship, used two PA6B engines. So the first would  
 15 have been the FAT test. The second would have  
 16 been just the second engine out of assembly.  
 17 Q And when did that second engine come into FME for  
 18 testing?  
 19 A We would have built it on site, and it would have  
 20 been tested immediately or shortly after the first  
 21 engine completed the FAT test.  
 22 Q Where were the PA6Bs built?  
 23 A They were built at Fairbanks.  
 24 Q Where at Fairbanks?  
 25 A In large engine building.

Page 23

1 Q That's different from the OP building?  
 2 A That's correct.  
 3 Q So the second engine would have started testing  
 4 shortly after the FAT test completed, right?  
 5 A Yes.  
 6 Q So was that in 2005?  
 7 A I don't know the answer. It could have been.  
 8 Q Well, it wouldn't have been any later than 2006,  
 9 right?  
 10 A Not likely.  
 11 Q Okay. And then when was the second engine testing  
 12 completed?  
 13 A I don't know exactly. It would have been roughly  
 14 30 days after it hit the stand.  
 15 Q All right. And did you get a third engine?  
 16 A Actually, we were expecting a fairly large  
 17 contract of 40 engines, which we didn't get. So  
 18 we built the first two, and then the stand waited  
 19 for a year or so, and then we tested the second  
 20 two engines.  
 21 Q The 40-engine contract you expected to get, when  
 22 did you learn that that was not going to happen?  
 23 A Shortly after the second engine was built, I  
 24 think.  
 25 Q So we're in the 2006 time frame?

Page 24

1 A Yes, somewhere in there.  
 2 Q So at that time how many engines were you  
 3 contracted to build, if not the 40?  
 4 A We were only contracted to build the first two.  
 5 That particular contract has kind of come  
 6 piecemeal to Fairbanks, where they've said Oh,  
 7 we're going to build two ships, and we're going to  
 8 need four engines. The Navy has not done a  
 9 long-term contract for those ships.  
 10 Q So the next engine you tested was a third engine?  
 11 A Uh-huh. Yes.  
 12 Q And that was part of a group of two engines,  
 13 right?  
 14 A Right.  
 15 Q Now, was there a separate contract for those two  
 16 additional engines?  
 17 A I don't know that.  
 18 Q But at that time you were only contracted to do  
 19 two more?  
 20 A Right. We built the test stand to test a numbers  
 21 of engines to be capable of quick change-out, so  
 22 that we could drop one, we could put one engine  
 23 on, get it tested, pull it off fast, put another  
 24 one, because we expected the large contract, and  
 25 that contract didn't come. So the test stand kind

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1 of languished, I would say, for a number of years.  
 2 It just kind of sat -- it was very lightly used.  
 3 Q How was it lightly used if not for PA6B?  
 4 A Just for PA6Bs.  
 5 Q So this rapid swap-out you've described, is that  
 6 embodied in the time frames you gave me already  
 7 for --  
 8 A Yes.  
 9 Q -- hookup and detachment?  
 10 A Yes.  
 11 Q So when did the third engine come up for testing?  
 12 A I don't know the answer to that.  
 13 Q Can you give me a rough time frame?  
 14 A It would probably have been in 2006 sometime.  
 15 Q And the fourth?  
 16 A Probably would have been shortly after that.  
 17 Q Same 2006 time frame?  
 18 A It's likely.  
 19 Q And after the fourth?  
 20 A Then there were other engines tested, but at that  
 21 point the test stand was functional and didn't  
 22 need my assistance. So at that point I didn't  
 23 keep as close track on it.  
 24 Q As far as tracking what engines were tested, that  
 25 would be in the program management files?

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1 A That would be in program management files, yes.  
 2 Q Other than PA6B engines, were any other engines  
 3 tested during your tenure at FME on test stand 7?  
 4 A No. Well, other engines tested, AVL put a Cat  
 5 C280 on that test stand.  
 6 Q Fair enough.  
 7 A But no other Fairbanks engines were tested on that  
 8 test stand.  
 9 Q Where was your office at the FME plant?  
 10 A It was in the warehouse, which was adjacent to the  
 11 OP building.  
 12 Q From your office, did you have a visual sightline  
 13 to the testing area?  
 14 A No. No. I had to walk outside from one building  
 15 to another.  
 16 Q From the time you started your contract work from  
 17 FME until the time AVL arrived in 2008, what other  
 18 engine testing was performed in the OP building  
 19 other than what you've already described for the  
 20 PA6B?  
 21 A We did -- we built a test stand for OP engines,  
 22 for OP genset for, I believe it was for Raytheon.  
 23 Those engines were to be shipped to Australia.  
 24 And I believe we tested four engines, if I  
 25 remember correctly. So I designed and built that

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1 test stand, also.  
 2 Q What test stand was that?  
 3 A That would be test stand 2.  
 4 Q Was test stand 2 ever used by AVL?  
 5 A No.  
 6 Q How many -- so four OP engines. When were they  
 7 tested?  
 8 A 2007, maybe. I don't know the answer to that  
 9 exactly.  
 10 Q For each OP engine, what testing was involved?  
 11 A It would have been -- there would have been a hot  
 12 test. I'm not sure whether on those engines there  
 13 was a FAT test. I don't remember one.  
 14 Q Would the FAT test consist of the same 1,000 hours  
 15 as the PA6B or different?  
 16 A Typically. That would be a typical test.  
 17 Q But again, the FAT would only be the first engine  
 18 in the series, right?  
 19 A Correct.  
 20 Q So if you're testing four, the first one would  
 21 undergo the FAT, and the remaining three would be  
 22 less?  
 23 A Correct.  
 24 Q So what did the next step, for the second engine,  
 25 what testing was that?

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1 A That was -- that would be a hot test, just basic  
 2 wear in, run at various power levels, check  
 3 bearing clearances, and then shut it down, take it  
 4 off.  
 5 Q And what's the total run time for that?  
 6 A That would be approximately, again, two, three  
 7 weeks.  
 8 Q I asked run time, so I want to make sure we're  
 9 connecting.  
 10 A Okay, run time. It's going to be approximately  
 11 that 30 hours of run time, 30, 40 hours, somewhere  
 12 in there.  
 13 Q Per engine, right?  
 14 A Per engine.  
 15 Q And it would take two to three weeks to cycle an  
 16 entire engine through the test?  
 17 A Yes.  
 18 Q And do you know the gallon per hour burn rating  
 19 for the OP engine?  
 20 A No, I don't.  
 21 Q How about for the PA6B?  
 22 A No.  
 23 Q Other than the support you provided by outfitting  
 24 the cells, do you have any particular expertise in  
 25 testing the engines themselves?



<p style="text-align: right;">Page 29</p> <p>1 A I do not.</p> <p>2 Q So we discussed PA6B, and we discussed the OP</p> <p>3 engines for Raytheon, right? Correct?</p> <p>4 A Yes.</p> <p>5 Q Any other engines tested by FME in the OP building</p> <p>6 between the time you hired -- excuse me -- by the</p> <p>7 time -- from the time you began your contract work</p> <p>8 for FME and 2008?</p> <p>9 A No. There could have been -- on second thought,</p> <p>10 there could have been one other contract, that</p> <p>11 would have been Carolina Power, was another OP</p> <p>12 genset that might have been tested in that time</p> <p>13 frame, but I don't remember exactly when it was</p> <p>14 tested. But it was similar to a Raytheon engine</p> <p>15 that would have been tested on test stand 2.</p> <p>16 Q How many engines?</p> <p>17 A I believe that was only two.</p> <p>18 Q But you don't recall the dates?</p> <p>19 A No.</p> <p>20 Q Okay. Anything other than Carolina Power?</p> <p>21 A Not that I remember.</p> <p>22 Q So by the time you finished your work to outfit</p> <p>23 test stand 7, for the PA6B FAT testing, were you</p> <p>24 satisfied that that cell had everything it needed</p> <p>25 to support the testing?</p>	<p style="text-align: right;">Page 31</p> <p>1 A The pumps were rusting to where they could not be</p> <p>2 used. The pipes were -- the pipes and the valves</p> <p>3 had rusted shut and could not be operated. The</p> <p>4 birds were flying in and out of the exhaust</p> <p>5 systems. There was other -- there was debris that</p> <p>6 was starting to gather, debris being pieces and</p> <p>7 parts from other places in the plant that somebody</p> <p>8 needed to put someplace, would be dropped in the</p> <p>9 floor of some of those test stands for storage</p> <p>10 spaces.</p> <p>11 Q Did you at that time possess the capability</p> <p>12 personally to determine what would be necessary to</p> <p>13 outfit those test stands such that they could be</p> <p>14 used?</p> <p>15 A Yes.</p> <p>16 Q And what would have been required for these</p> <p>17 abandoned test cells to be used?</p> <p>18 A That's heavily dependent upon the type of engine</p> <p>19 that they wanted to test.</p> <p>20 Q And what factors would go into that?</p> <p>21 A Configuration of the engine, where the water comes</p> <p>22 on and off the engine, where the exhaust and</p> <p>23 intake come on and off -- where they actually fit</p> <p>24 up to the engine, what type of engine base it is,</p> <p>25 which would determine what kind of engine mounts</p>
<p style="text-align: right;">Page 30</p> <p>1 A Yes.</p> <p>2 Q Same question with respect to the OP engines for</p> <p>3 Raytheon and test stand 2?</p> <p>4 A Yes.</p> <p>5 Q But Carolina power, that would have tested also on</p> <p>6 test stand 2, right?</p> <p>7 A Correct.</p> <p>8 Q From the time you arrived as a contract worker for</p> <p>9 FME, what was your understanding of the status of</p> <p>10 cells in the OP building other than test stands 7</p> <p>11 and 2?</p> <p>12 A They were all abandoned in place.</p> <p>13 Q Do you know the last time that they had been used</p> <p>14 for testing?</p> <p>15 A No.</p> <p>16 Q Describe the status of the other test stands for</p> <p>17 me, if you would, at the time you started your</p> <p>18 upgrade work on test stand 7.</p> <p>19 A The other test stands would have had equipment in</p> <p>20 place to test engines, including piping systems,</p> <p>21 intakes and exhaust systems. All that equipment</p> <p>22 was left in place and essentially abandoned.</p> <p>23 Q What led you to the determination that it had been</p> <p>24 essentially abandoned? What about it gave you</p> <p>25 that impression?</p>	<p style="text-align: right;">Page 32</p> <p>1 that you would need, fuel consumption, which would</p> <p>2 determine how much fuel, fuel tank size and</p> <p>3 delivery pump, engine power requirements, which</p> <p>4 would determine how much cooling, what size piping</p> <p>5 we would need for cooling the engines, that kind</p> <p>6 of thing.</p> <p>7 Q With respect to test cells 7 and 2, was there a</p> <p>8 mechanism in place for measuring the fuel</p> <p>9 consumption of those stands?</p> <p>10 A Every stand had a bulk fuel meter. By bulk I mean</p> <p>11 a Badger-type meter. That is called a nutating</p> <p>12 disc meter. And it is only used for bulk</p> <p>13 measurement. It has -- it is not fine enough to</p> <p>14 actually be used for emissions.</p> <p>15 Q When you say not fine enough to be used for</p> <p>16 emissions, what do you mean by that?</p> <p>17 A Its resolution is in, like, .1 gallons or maybe</p> <p>18 .5 gallons. So for emissions testing, you would</p> <p>19 want to know down to the grams of fuel being used.</p> <p>20 But the bulk meters were used just to measure the</p> <p>21 amount of fuel that was being used in each</p> <p>22 individual test stand. And we read those meters</p> <p>23 on a daily basis, when the test stands were being</p> <p>24 used.</p> <p>25 Q You mentioned the resolution is in .1 or a</p>

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1 .5 gallons, correct?

2 A Yes.

3 Q Help me understand the engineering of that. What

4 does that translate to as a margin of error per

5 gallon of fuel?

6 A That would mean that if it's .1, then when you

7 read the meter -- because the meter has two things

8 on it. It has a row of numbers, which index based

9 upon the amount of flow that goes through it, and

10 it also has a dial on it. So when you look at the

11 meter, you read the numbers, and then you read the

12 dial to determine the finer resolution. So it

13 could have been plus or minus .1 gallons.

14 Q At what point in time -- in other words, I'm a

15 layperson, so help me understand this. If you run

16 a test cell for an entire day's worth of testing,

17 so let's say you've got a constant fuel flow

18 through that meter for seven hours.

19 A Okay.

20 Q At the end of the day, what's your margin of error

21 on how much fuel variance you may actually have

22 had versus what's showing on the meter?

23 A It could be a couple gallons either direction. We

24 never used the meters to really -- to do anything

25 for fuel consumption. We always used the meters

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1 as a check on what was in the bulk tank outside.

2 The bulk tank has a float in it, and it has a

3 measuring device on the outside where you read the

4 level of the liquid in the tank in feet. That

5 changes based on temperature. So in a day, if the

6 temperature is 30 degrees at the beginning of the

7 day, and you read it at the beginning of the day,

8 and then it's 60 degrees by the end of the day,

9 then the level has changed in the tank without any

10 usage. So we just use the meters on the inside to

11 say what was actually coming to the tank -- coming

12 inside to individual test stands. But it was only

13 good within a gallon or two.

14 Q When you measured the tank outside looking at the

15 float level, was there a chart or some reference

16 point you looked at that compensated for

17 temperature variances when you took those

18 readings?

19 A No. We just tried to read it at the same time

20 every day. So from summer to winter, we would get

21 difference variances in the reading. But that

22 reading was really only used for filling the tank.

23 When it got down to a certain level, we knew that

24 we needed to fill it regardless of what the

25 temperature was.

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1 Q For what reason did you take readings every day?

2 A Basically, it was historical. It's what we had

3 done for years. And when that was passed to me, I

4 just continued it.

5 Q And when you -- did you personally take the

6 readings every day?

7 A No. I had one of my maintenance guys take the

8 readings.

9 Q Who would do that?

10 A Bill Christensen or another employee called

11 Pat Giles, either one of them.

12 Q And did either of those gentlemen take such

13 readings throughout the entire FME facility,

14 including, for example, the large engine building?

15 A Yes.

16 Q So when they would take those readings for the OP

17 building, would they record their readings

18 anywhere?

19 A They recorded them on a daily check sheet, which

20 had a spot for all of those readings. And then

21 they would turn that sheet into me on a daily

22 basis.

23 Q And those check sheets, what did you do with them

24 as you accumulated them?

25 A I accumulated them for a period of about a month,

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1 and then I turned them back over to the guys,

2 because I would take the data off of those and put

3 it into an Excel spreadsheet. At that point, the

4 sheets don't do anything for me anymore, and so I

5 gave them back to the guys, and they would save

6 them for a while. I do not recall whether or not

7 they would throw them away.

8 Q And the Excel spreadsheet you kept updated on a

9 rolling basis?

10 A Yes, I did.

11 Q How often would you make translations from the

12 check sheets into the spreadsheet?

13 A Usually it was once a week.

14 Q Are you the only person who performed that

15 function from the time you were doing contract

16 work for FME until the present?

17 A Before me, it was Cal Kooyenga. That would be

18 spelled K-o-o-y-e-n-g-a. He was the senior plant

19 engineer. When he retired, then I took over those

20 responsibilities. When I left Fairbanks, those

21 responsibilities were transferred to Steve Blease,

22 B-l-e-a-s-e. And who knows whether he's continued

23 that.

24 Q Let me get some dates here. When did Cal retire?

25 A 2012, I think.

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1 Q So you didn't start doing the spreadsheet updates  
2 until he retired?  
3 A Correct.  
4 Q But you did it from 2012 until you left FME?  
5 A Right.  
6 Q When did you leave FME?  
7 A June 30, 2014.  
8 Q And where did you go after FME?  
9 A I'm self-employed now. I run my own consulting  
10 business.  
11 Q Engineering consulting, I assume?  
12 A Yes.  
13 Q Do you do any consulting for FME?  
14 A I do.  
15 Q What do you do for FME?  
16 A Test stands.  
17 Q Couldn't get away from it, huh?  
18 A They lacked significant amount of expertise.  
19 Q So since you left for your consulting work for FME  
20 test stands, what have you worked on?  
21 A I've worked on the Shawmox test stand. That's an  
22 engine that's going to go out to South Carolina.  
23 I've worked on -- I've consulted and given advice  
24 on the MAN test stands in large engine, the PA6B  
25 genset test stands in large engine, and the PC2.5

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1 test stand in large engine.  
2 Q Shawmox, how do you spell that?  
3 A S-h-a-w-m-o-x.  
4 Q And where is that engine being tested?  
5 A That engine is being tested in test stand 3 in the  
6 OP.  
7 Q When did that testing start?  
8 A That actually started -- it actually started this  
9 summer, I believe.  
10 Q And what does the testing consist of?  
11 A That's a good question. I'm not involved in the  
12 testing, just the test stand design.  
13 Q Have you completed the test stand design?  
14 A Yes.  
15 Q Have you gone back to do any follow-up issues on  
16 the test stand design?  
17 A No, I have not.  
18 Q When did you first start the test stand design?  
19 A 2010. Lots of delays in that project.  
20 Q How many engines are involved?  
21 A I believe it's just two.  
22 Q And what's the testing regimen for those?  
23 A I don't know.  
24 Q And the MAN engine, that's in the large engine  
25 building?

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1 A That's correct.  
2 Q And the PA6B genset, is that in some way different  
3 that the PA6B that you've already described?  
4 A It's a PA6B that has lower horsepower, and it's  
5 coupled with a generator on its own base.  
6 Q Is that part of the LCS contract or separate?  
7 A That's separate.  
8 Q Who is that for?  
9 A That's also for the Navy.  
10 Q What specifically for the Navy?  
11 A I believe those are gensets for aircraft carriers.  
12 Q How many engines are involved with that?  
13 A That's a good question. I don't know.  
14 Q Do you know if the testing regimen is the same for  
15 that PA6B as the others you've described?  
16 A I do not.  
17 Q How many engines involved?  
18 A I don't know.  
19 Q And the PC2.5, is that in the OP building?  
20 A No. This is in large engine.  
21 Q How frequently are you in the FME plant these  
22 days?  
23 A I am not. I have not been back since I left in  
24 2014.  
25 Q So what work have you been doing with respect to

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1 the test stands, then?  
2 A It's been design and on-the-phone consulting. I  
3 was fired. I was not -- I'm not allowed back on  
4 site.  
5 Q Why were you fired?  
6 A Safety violation.  
7 Q What was your safety violation?  
8 A I was climbing on the side of an engine without a  
9 safety harness on.  
10 Q Who made your termination decision, to your  
11 knowledge?  
12 A Rebecca Bratton and Nick Huber.  
13 Q Do you feel you're able to fulfill the duties for  
14 the design you need to do without being on site?  
15 A Yes. I could do better if I was on site.  
16 Q Are you operating pursuant to a written consulting  
17 agreement with FME?  
18 A No. It's on a case-by-case basis. I have a  
19 purchase order, an open purchase order for  
20 consulting services.  
21 Q Was there any litigation involved with your  
22 termination?  
23 A No.  
24 Q Did you sign any type of separation agreement?  
25 A I believe I did. Yes.

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1 Q When would that have been done?  
2 A June 30, 2014.  
3 Q When did the event take place that was the subject  
4 of your violation?  
5 A Two days prior on Saturday.  
6 Q You have purchase orders for your work, correct?  
7 A Correct.  
8 Q How does that flow of paperwork work?  
9 A I typically will provide a quotation for services,  
10 just time and materials, and then they'll give me  
11 a purchase order. When we run out of money on the  
12 purchase order, they will just up the value of the  
13 purchase order and revise it and send it back to  
14 me.  
15 Q How many purchase orders have there been?  
16 A That's a good question. I don't know. There has  
17 been a number of them since 2014.  
18 Q Do you have any written consulting agreement with  
19 FME relative to duties in connection with this  
20 litigation?  
21 A No. The people at FME don't even know that I'm  
22 involved in this.  
23 Q The people being?  
24 A The people -- the people that are left at FME.  
25 That would be the current test stand manager,

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1 Mark McCorkle, the test stand engineer,  
2 Tim Walters. The vast majority of people that I  
3 knew when I was there that were in management  
4 positions have left.  
5 Q What did you do to prepare for this deposition  
6 today?  
7 A I reviewed some of my e-mails from 2010-2011  
8 period of time.  
9 Q Do you still have possession of those, or were  
10 those provided to you by counsel from FME?  
11 A No. I have possession of those. When they fired  
12 me at Fairbanks, they called me three days later  
13 and asked me to come back as a part-time employee.  
14 And then they gave me a computer with all my  
15 backup e-mails. And when I left there, I just  
16 took copies of e-mails. Because they wanted me to  
17 do follow-along consulting work.  
18 Q Other than e-mails, did you have any other  
19 documents still in your possession that related to  
20 your time at FME?  
21 A Yes.  
22 Q What are those?  
23 A I have CAD files of the plants, various test  
24 stands, configurations to the test stands. I have  
25 electrical and mechanical drawings.

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1 Q How about the fuel spreadsheet that you updated?  
2 A I do have that.  
3 Q You do?  
4 A Yeah. It's in the e-mails.  
5 Q If I wanted to find the check sheets that were  
6 generated originally for the fuel ratings, where  
7 would I go to find those?  
8 A You would have to contact Bill Christensen,  
9 probably.  
10 Q So to your knowledge, other than the check sheets  
11 and the spreadsheet that was updated based on the  
12 check sheets, were there any other records kept at  
13 FME relative to fuel being consumed by engines  
14 tested in the OP building?  
15 A None that I know of. The records that we took and  
16 the readings that we took were delivered I believe  
17 to Pete DiCaro, and he was responsible, then, for  
18 keeping track of the fuel usage. I think that's  
19 the case.  
20 Q Did you have an understanding of any necessity to  
21 report fuel burn to WDNR, the Department of  
22 Natural Resources?  
23 A I knew that we had a roughly 30,000-gallon rolling  
24 average fuel burn limit. But it wasn't part of my  
25 responsibilities to report that.

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1 Q To WDNR?  
2 A Correct.  
3 Q But you understood the fuel burn that you were  
4 reporting to I think you said Pete DiCaro, that  
5 that would be used to report to DNR?  
6 A Yes.  
7 Q Were you concerned at any time about the accuracy  
8 of the fuel gauges that were in place for that  
9 purpose?  
10 A No.  
11 Q Why not?  
12 A I didn't feel that the -- first of all, the DNR  
13 never specifies what accuracy they're looking for.  
14 They just say to measure it. So the measurement  
15 that we had was going to be accurate enough, we  
16 felt, for reporting. So we just left it as it  
17 was.  
18 Q Who made that determination that it was accurate  
19 enough for reporting to DNR?  
20 A That was a relatively late discussion, actually,  
21 post-AVL, as I recall. Fairbanks was trying to --  
22 I don't know what they call it -- apply for the  
23 ISO 14001 certification, which is an environmental  
24 certification, and it requires metering and  
25 measuring all these things. And at that point we



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1 were changing meters and had to decide what meters  
2 we were going to put on and how they were going to  
3 be calibrated, if they could be calibrated.  
4 Q This was post-AVL after AVL stopped testing  
5 engines?  
6 A Yes.  
7 Q When AVL was in the OP building testing engines,  
8 did you have any understanding of how AVL was  
9 measuring its fuel burn?  
10 A AVL had some specialized fuel measuring devices  
11 we gave them, and they installed some of these  
12 Badger meters in advance of their equipment, and  
13 we would read those meters on a daily basis.  
14 Q For the reading, you would read the AVL test site  
15 meters, correct?  
16 A We would read the Fairbanks meters that the -- the  
17 Badger meters put in by Fairbanks that were  
18 upstream of the AVL meters. The AVL meters were  
19 very precise for measuring fuel burn and  
20 consumption and emissions.  
21 Q Did FME ever read those AVL meters in order to  
22 determine how much fuel burn AVL had?  
23 A No, not to my knowledge.  
24 Q Your review of documents prior to today, was that  
25 based on the e-mails you possessed?

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1 A Yes.  
2 Q Did you receive any documents from Mr. DeGeorge or  
3 other counsel for FME to review?  
4 A Yes.  
5 Q What were those?  
6 A I received -- I believe I received the -- a couple  
7 depositions to review. And I received -- there  
8 were some comments from one -- from Steve and from  
9 John Bottorff.  
10 Q Okay. I don't want to hear about comments from  
11 Steve.  
12 A Okay.  
13 Q That's privileged. But did John Bottorff  
14 separately communicate with you about your  
15 deposition today?  
16 A It was in communication with everybody.  
17 Q Including counsel?  
18 A Yes.  
19 Q Did you speak with Mr. Bottorff or any other FME  
20 representative outside the presence of counsel  
21 about your deposition today?  
22 A Yes. But only to the extent of where it was going  
23 to be, when it was going to be, and how to get  
24 here.  
25 Q With respect to the documents and e-mails that you

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1 still have in your possession, did any  
2 representative of FME approach you to get those  
3 for purposes of this litigation?  
4 A Back when the litigation first started, several  
5 years ago, I talked with counsel at that time, and  
6 I believe all of the e-mails that I had were  
7 gathered up. All the communication -- all the  
8 information that I had was embodied in those  
9 e-mails.  
10 Q How was it gathered up when you were still there?  
11 A I have no idea. I assume that somebody went to IT  
12 and gathered up all the e-mails.  
13 Q Did anyone come visit you personally to collect  
14 documents?  
15 A No.  
16 Q What about hard copy documents?  
17 A I generally didn't keep very many of those.  
18 Anything that I had, anything that I had in hard  
19 copy would have come out of an e-mail.  
20 Q So did anyone come to see you about hard copy  
21 documents --  
22 A No.  
23 Q -- for this litigation?  
24 A No.  
25 Q A master agreement was signed between AVL and FME

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1 in August of 2008. Do you recall that?  
2 A Yes.  
3 Q Did you have any involvement with negotiating that  
4 master agreement?  
5 A I did not.  
6 Q Prior to August 28th of 2008, did you personally  
7 have any communications with any representatives  
8 of AVL?  
9 A What date was that in 2008?  
10 Q August 28th of 2008.  
11 A Is that the date of the master agreement?  
12 Q Yes.  
13 A I don't know the answer to that. I might have.  
14 It would have been on a technical level.  
15 Q Did you keep any notes, that you recall, of any  
16 meetings with any AVL representatives?  
17 A I'm a very poor notetaker. So no.  
18 Q Do you keep a calendar?  
19 A I do.  
20 Q How do you keep your calendar?  
21 A It's usually on Microsoft Outlook.  
22 Q And is that still intact for that 2008 time period  
23 on your current machine?  
24 A No, it's not.  
25 Q Did you leave that behind at FME?



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1 A I believe that at some point it came with me  
 2 because it was part of the Outlook file, but I  
 3 believe that I deleted all that information  
 4 because it was legacy and baggage, and that was  
 5 actually done -- would have been done 2014.  
 6 Q So you never reviewed any draft of what you  
 7 understood would become the master agreement?  
 8 A No.  
 9 Q You never had any discussions with anyone at FME  
 10 about terms that should be included in the master  
 11 agreement?  
 12 A No.  
 13 (Exhibit No. 82 marked for  
 14 identification)  
 15 Q Mr. Niehaus, you have Plaintiff's Exhibit 82, a  
 16 January 21, 2011 e-mail from you to DiCaro and  
 17 others. Do you recall this e-mail?  
 18 A Yes, I do.  
 19 Q You begin saying Spent some time yesterday evening  
 20 with AVL. Do you recall who from AVL?  
 21 A No, I don't.  
 22 Q Was the topic of discussion this subject matter,  
 23 AVL testing of a locomotive?  
 24 A Yes.  
 25 Q And just generally, what did this topic involve?

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1 A AVL was interested in testing locomotives and  
 2 trying to -- and was interested -- because a  
 3 locomotive is considered a mobile source, they  
 4 don't come under the same testing regimens that --  
 5 as a stationary source does in the DNR  
 6 regulations; therefore, they are exempt from a lot  
 7 of the restrictions that a stationary source would  
 8 be. So their idea was to bring a locomotive onto  
 9 the Fairbanks site, because we had a fairly  
 10 extensive set of rails on the site, and then test  
 11 it at that -- at some location on the plant.  
 12 Q What did you think about the idea?  
 13 A I thought it was very -- I thought it was unique  
 14 and an interesting idea that might be able to move  
 15 testing forward, if we could use the exemption for  
 16 mobile source to get around some of the DNR regs.  
 17 Q Whatever happened with this idea?  
 18 A It went nowhere fast.  
 19 Q Why?  
 20 A Apparently once you -- apparently once a  
 21 locomotive is stationary in a yard, then it's no  
 22 longer considered a mobile source. Something a  
 23 mobile source is hauling freight down a track.  
 24 MR. DeGEORGE: So you've got to  
 25 design a moving test stand.

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1 THE WITNESS: That would be unique.  
 2 MR. HERRMANN: Genius.  
 3 Q In your closing lines, your last two sentences,  
 4 you say Lease agreement with ABC, we all know that  
 5 this is an issue. What did you intend to convey  
 6 with that?  
 7 A ABC Corporation owns the land on which Fairbanks  
 8 has facilities. So ABC Corporation owns the OP  
 9 building. Fairbanks leases the test floor and a  
 10 section of the building called Freeport Bay from  
 11 ABC. ABC also owns land to the west of the  
 12 building. Fairbanks owns the facilities, i.e. the  
 13 railroad tracks, the cooling towers, you know, any  
 14 underground piping. That's all Fairbanks'  
 15 property. The lease agreement with ABC would have  
 16 to be renegotiated to some degree or at least ABC  
 17 checked with, so that they could approve our use  
 18 of the land for that purpose.  
 19 Q Did anyone ever check with ABC?  
 20 A I don't believe anybody did. I know I didn't.  
 21 Q Then you go on to say The big issues seem to be  
 22 the lease?  
 23 A And emissions and noise. A locomotive is very  
 24 loud, and running at full power in the -- right  
 25 next to a residential area without some type of

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1 acoustic treatments around the engine would  
 2 probably be an untenable situation and would  
 3 probably get Fairbanks in a lot of trouble with  
 4 the city for noise pollution.  
 5 Q Was AVL aware of the lease situation at this time?  
 6 A Yes, they were.  
 7 Q How did that come about?  
 8 A How did what come about?  
 9 Q How did AVL come to know about the lease  
 10 situation, if you know?  
 11 A I don't know exactly how they came to know about  
 12 it. But they were aware that we were leasing that  
 13 part of the building from ABC.  
 14 Q Prior to this date, did you ever have occasion to  
 15 have any discussions with any AVL representative  
 16 about the lease situation?  
 17 A I generally didn't discuss the lease agreement  
 18 with other -- with AVL.  
 19 Q Did you have any -- personally have any particular  
 20 role with respect to that lease relationship?  
 21 A After Cal retired, then the responsibilities for  
 22 the lease kind of fell into my hands. I had all  
 23 the documentation for the lease, the lease  
 24 agreements and all that kind of thing.  
 25 John Bottorff was typically the person in charge

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1 of the lease. But when it came to building  
2 maintenance issues, stuff that the -- that ABC  
3 needed to do to maintain their building, then I  
4 was the point of contact for that.  
5 Q What knowledge did you have about FME's air  
6 permits with WDNR?  
7 A I knew that there was a limit on what our  
8 emissions could be. But I was never really clear  
9 on what it was. I knew there was a fuel usage  
10 limit in both buildings, independent fuel usages.  
11 I knew that the cooling -- I was under the  
12 impression that the fuel usage was based on the  
13 cooling tower capacity in some manner, and that we  
14 could not expand the cooling tower capacity beyond  
15 what it was without violating our air permit.  
16 Q Did you have a copy of the air permit?  
17 A I did not.  
18 Q Did you ever review it at any time?  
19 A I don't remember. If I did, it would have been in  
20 the last couple years, like 2013, '14.  
21 Q And if you did, for what purpose would you have  
22 reviewed it?  
23 A I started to get more involved in that when  
24 Rebecca Bratton was at Fairbanks. She involved me  
25 to some degree in the air permit but not in any

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1 negotiations with the DNR. I never went to visit  
2 the DNR or spoke with anybody at the DNR about  
3 that. It was more on a technical basis what  
4 information needed to be in the air permit, what  
5 stacks we had, what was being used and not used,  
6 that kind of thing.  
7 Q Prior to that time you just described, did you  
8 ever have occasion to review the air permit to  
9 understand any particular aspect of it?  
10 A No. I avoided that.  
11 Q Why did you avoid that?  
12 A I didn't want to get involved in the air permit.  
13 It was nothing that I was really interested in.  
14 Q Who was the person who was responsible for the air  
15 permit?  
16 A It would have been Julie Mosley, and then it would  
17 have been Rebecca Bratton.  
18 Q While AVL was testing engines in the OP building,  
19 what did you know about the testing regimen for  
20 each of those engines?  
21 A Nothing.  
22 Q Did you have any understanding of what AVL's  
23 customers were requiring for those engines?  
24 A No.  
25 Q With respect to each of the AVL engines, what did

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1 you understand about each one of them?  
2 A That they had to be tested, and they were going to  
3 be tested at length for usually running endurance  
4 for long periods of time. Other than that, that's  
5 about the extent of it.  
6 Q Did you have any involvement in discussions  
7 relative to total fuel burn that AVL was  
8 experiencing with its engines?  
9 A I probably was involved in some discussions, but I  
10 don't remember anything specifically.  
11 Q Do you remember any issues relative to any need  
12 for AVL and FME to share available fuel burn  
13 limits?  
14 A Yeah. There was an ongoing discussion between AVL  
15 and Fairbanks. Fairbanks had priority. If we had  
16 to test the PA6 engine, we were going to use up  
17 fuel, and we were also going to use up cooling  
18 capacity, and at some point we run out of cooling  
19 capacity, which means that AVL, being secondary,  
20 had to shut down one of their engines. So pretty  
21 much we could run a PA6 and one of the AVL engines  
22 but not more than that.  
23 Q How did you come to an understanding that FME had  
24 priority and AVL was secondary?  
25 A That was what was communicated to me, that AVL

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1 needed to shut down. That was my understanding.  
2 Q Who communicated that to you?  
3 A I believe that was Pete DiCaro.  
4 Q When did Pete communicate that to you?  
5 A That would have been early on, maybe even -- it  
6 might have actually been during the time that we  
7 were having, you know, the problems of fuel burn  
8 when we were starting to run out of fuel capacity.  
9 Q When you say early on, can you put a time frame on  
10 that?  
11 A Early on in the -- in AVL's build-out of some of  
12 the test cells. So that would have been, what,  
13 2008, 2009.  
14 Q And did Pete DiCaro put in those terms to you that  
15 AVL needed to stop testing?  
16 A I don't know that I could characterize it that  
17 way. He would have said that If we have to test,  
18 AVL needs to shut down their engines, so that we  
19 can test. So it would have been a matter of  
20 priority. Not that AVL can't test -- well. If  
21 Fairbanks had to run, then AVL could only run a  
22 certain amount because Fairbanks had to do  
23 testing. So it was a matter of priority, and at  
24 the point where Fairbanks shut down, then AVL  
25 could turn their engines on.

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1 Q Did there come a point where anyone at FME  
2 communicated to you that they just wanted AVL to  
3 get out of the OP building?  
4 A No.  
5 Q What knowledge do you have of a relocation of an  
6 EMD engine to the large engine building?  
7 A I do recall that that was done. I was not  
8 involved in any negotiations with that. But I was  
9 involved in the logistics, in terms of what they  
10 could use, what they couldn't use, what kind of --  
11 what facilities we had available for them.  
12 Q So were you involved in determining that there was  
13 availability in the large engine building?  
14 A No.  
15 Q Who made those decisions?  
16 A That probably -- whoever was the director of  
17 manufacturing at that point in time.  
18 Q You don't recall who that was?  
19 A That might have been -- I don't remember right  
20 now. I'll remember in a minute.  
21 MR. DeGEORGE: Can we take a short  
22 break?  
23 MR. HERRMANN: Yeah. Sure, we can.  
24 (A recess was taken)  
25 By Mr. Herrmann:

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1 Q Did there come a time where you gained an  
2 understanding that there was an issue with certain  
3 stacks in the OP building not being permitted  
4 under the air permit?  
5 A I remember the discussions, but it was not part of  
6 what I was responsible for.  
7 Q What do you remember about the discussions?  
8 A AVL got to a certain point and they could not test  
9 any farther. In other words, they could not  
10 construct any additional test stands.  
11 Q Why not?  
12 A The stacks were not -- the stacks were not  
13 permitted, and we were running out of fuel.  
14 Q Putting aside the fuel limits for a moment, what  
15 impact did the permitting status of the stacks  
16 have on AVL's ability to continue testing?  
17 A As I recall, AVL had to shut down one of its --  
18 the two test stands in the north end. I'm always  
19 confused as to which ones those are. I think that  
20 was 32 and 33. They had to shut down one of them  
21 and re-route the exhaust of the other one, which I  
22 found unusual -- I guess I found that unusual  
23 because I thought that both of those stacks -- I  
24 was told that both of those stacks at the north  
25 end of the plant were permitted. I did not know

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1 that one of those was not permitted.  
2 Q When were you told they were permitted?  
3 A Before AVL started. We actually had, in 2005, an  
4 engine running on one of those stacks.  
5 Q Which engine was that?  
6 A It was an OP engine. Before AVL came on site, we  
7 had to demo two engines out of that location.  
8 Q So in 2005, there was an OP engine?  
9 A There was an OP engine, and there was a 2-cylinder  
10 PA6B engine.  
11 Q Were they both run through non-permitted stacks?  
12 A They were run through the two stacks on the north,  
13 which I was told were both permitted.  
14 Q Do you remember the numbers of those stacks?  
15 A I do not off the top of my head.  
16 Q But they were on the north end of the building?  
17 A Correct.  
18 Q And there were only two stacks on the north end of  
19 the building?  
20 A Correct.  
21 Q Who told you that they were permitted?  
22 A I don't know that I could identify that person.  
23 It was -- it could have been a number of different  
24 persons. It could have been Julie. Could have  
25 been Cal. It could have been a number of people.

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1 Q Did you affirmatively ask that question, Are these  
2 permitted?  
3 A No.  
4 Q So how did it come to you that they were  
5 permitted?  
6 A It was part of the discussions -- I guess, I  
7 assumed that they were permitted based upon the  
8 fact that we had engines out there, that we had  
9 this 2-cylinder engine, and we had a 6-cylinder OP  
10 engine, and I assumed that both of those stacks  
11 were permitted because we had those. I don't  
12 believe I ever asked the question if they were  
13 permitted.  
14 Q And those engines were run during your tenure at  
15 FME, right?  
16 A Only the -- excuse me -- only the 6-cylinder OP  
17 engine.  
18 Q And the 6-cylinder OP, what type of test cycle was  
19 that running through?  
20 A That was actually run to provide power for the  
21 blower test stand, which was farther down the  
22 floor in the building.  
23 Q And how long did it run to power the blower test  
24 stand?  
25 A Four hours at a time, once every two or three

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1 months.  
2 Q Over what period of time?  
3 A In years, you mean?  
4 Q Well, yeah, as best you can. I mean, four hours  
5 at a time, one time every two to three months. So  
6 what was the span for which that engine was  
7 running with its exhaust going through the  
8 unpermitted stack? Years, if it's years, but --  
9 A It would have been years.  
10 Q Starting when and ending when?  
11 A Well, it was operational when I got there in 2004,  
12 and we tore it out before AVL arrived.  
13 Q Tore out the engine?  
14 A Yes.  
15 Q So sometime between 2004 and 2008?  
16 A Yes.  
17 Q Was it running up into 2008?  
18 A I don't know.  
19 Q Do you know when it was last run?  
20 A No.  
21 Q Who would know that?  
22 A I don't know that anybody would know that anymore.  
23 I think most everybody is gone.  
24 Q But while you were there, you witnessed that  
25 engine running?

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1 A Yes.  
2 Q And then the other engine you mentioned, you  
3 didn't see that one running?  
4 A That one never ran, to my knowledge, when I was  
5 there.  
6 Q But it was connected to the stack?  
7 A It was.  
8 Q On the north end?  
9 A Yes.  
10 Q Were any other engines run by FME that were  
11 connected to what was ultimately determined to be  
12 unpermitted stacks?  
13 A Not to my knowledge.  
14 Q And the engine you were aware of, that you  
15 witnessed running, you tore that one out because  
16 of the AVL relationship, right?  
17 A Correct.  
18 Q And that was the only reason that engine was taken  
19 out?  
20 A Right.  
21 Q When did it first come to your attention that  
22 there was an issue with respect to the permitting  
23 status of the stacks?  
24 A It would have had to have been 2011, I think.  
25 Q And how were you informed of it?

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1 A I remember a conversation with John Scott of AVL,  
2 and they were looking for -- they were looking for  
3 expansion of their testing beyond the two cells  
4 that they had. And they wanted to expand to the  
5 south side of the wall that divided the test  
6 floor.  
7 Q How did the stacks permitting issue come up in  
8 that conversation?  
9 A Maybe it wasn't so much stack permitting as it was  
10 stack silencer capacity. Because they wanted to  
11 test on test stand 8, and the silencer that was  
12 installed and was available at that location was  
13 not large enough to handle the flow that they  
14 needed.  
15 Q Did that relate to a permitting issue, or was it  
16 just some type of mechanical issue?  
17 A It may have related to a permitting issue. As I  
18 understand later, that particular stack was not  
19 permitted.  
20 Q All right. That's what I want to understand is  
21 when did you first come to know that any of the  
22 stacks in the OP building were not permitted?  
23 A It would have had to have been in 2011, sometime  
24 in the first half of the year.  
25 Q And how did it first come to your attention?

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1 A I think we had a meeting with John Scott, myself,  
2 Pete, Julie, couple other AVL folks, and it was --  
3 we were informed at that meeting that we had some  
4 permitting issues and that the stacks that they  
5 wanted to use were not permitted.  
6 Q Do you remember when that meeting was?  
7 A April, April-ish, maybe. I think. Had to have  
8 been early April.  
9 Q Do you know for sure?  
10 A It's going to be close.  
11 Q Was there a time prior to a meeting where AVL  
12 people were present where only FME people  
13 discussed any non-permitted status of stacks in  
14 the --  
15 A Not to my knowledge.  
16 Q When you learned of the non-permitted status of  
17 the stacks, did you go back and take a look at the  
18 permit --  
19 A No.  
20 Q -- to check it?  
21 A No.  
22 Q Were you surprised to hear that those stacks were  
23 non-permitted?  
24 A I knew that some of the stacks were not permitted.  
25 Fairbanks has a bad habit of abandoning things in



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1 place and leaving all kinds of junk hanging  
2 around. So I knew some of the stacks were  
3 permitted and some of them weren't, but I wasn't  
4 exactly clear which ones were and which ones  
5 weren't, except for the ones that we were using,  
6 like the silencer for test stand 2, the silencer  
7 for the power engine, the silencer for the PA6  
8 test stand, and then I thought the two on the end  
9 were permitted, and apparently only one was.  
10 Q Well, did you have any understanding, at any time  
11 before AVL installed its engines in the OP  
12 building, whether any of the stacks to which AVL  
13 was connected at that time were not permitted?  
14 A No.  
15 (Exhibit No. 83 marked for  
16 identification)  
17 Q You have Plaintiff's Exhibit 83. Do you recognize  
18 this e-mail of March 28, 2011?  
19 A Yes, I do.  
20 Q And what did this relate to?  
21 A This related to having too many engines for the  
22 capacity of the cooling towers.  
23 Q And you report to Julie in your e-mail, the second  
24 one on the page here, in the second line, I am  
25 working to install temporary cooling towers?

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1 A Yes.  
2 Q What did that relate to?  
3 A In order for AVL to get to run additional  
4 engines -- or actually to run its engines in  
5 addition to us, to Fairbanks running the PA6B  
6 engine, we were going to have to install  
7 additional cooling capacity in some form, whether  
8 that is a radiator or whether that was additional  
9 cooling tower.  
10 Q And what was the temporary cooling towers, what  
11 did that refer to?  
12 A So we were going to rent some temporary towers,  
13 from either Carrier or Aggreko, and put those out  
14 to the west of the current cooling towers on the  
15 ground.  
16 Q From an engineering perspective, would that have  
17 worked to the end of the year, based on your  
18 paragraph here?  
19 A Yes. The reason it didn't happen is because the  
20 addition of another cooling tower would have  
21 violated our permit.  
22 Q Did you have personal knowledge of that, or were  
23 you relying on someone else to reach that  
24 conclusion?  
25 A I relied on somebody else to reach the conclusion.

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1 I actually added additional piping to the cooling  
2 tower system in order to connect to this, this  
3 additional cooling tower to be installed, and we  
4 were within days of bringing in the cooling tower  
5 to the plant and putting it in place when we were  
6 halted.  
7 (Exhibit No. 84 marked for  
8 identification)  
9 Q You have Plaintiff's Exhibit 84. Do you recognize  
10 this e-mail? I see that you are a to addressee  
11 from Mr. MacGregor?  
12 A I do not remember the e-mail specifically, nor do  
13 I remember the meeting, but obviously I was there.  
14 Q Well, with that, let me see if I can jog your  
15 memory about the meeting. If you turn to the  
16 second page on the meeting minutes, do you recall  
17 a discussion, under item number 1, Per FM, the  
18 existing site permit was issued in 1999; do you  
19 see that?  
20 A Yes, I do.  
21 Q Do you recall the second bullet point being  
22 discussed, emissions limited to five specific  
23 exhaust stacks at the site?  
24 A That is -- so I don't remember discussing that  
25 specific point, but the fact that it's five would

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1 lead me to believe that it's the five stacks that  
2 we were using. So that would be for test stand 2,  
3 for the power engine, for test stand 7, and then  
4 the two on the north side.  
5 Q Was it known to FME at this time that any of those  
6 stacks were not permitted?  
7 A Not to my knowledge.  
8 Q Do you have any knowledge of aftertreatment being  
9 installed on test cell 7 at any point?  
10 A Yes. That was designed while I was still at  
11 Fairbanks.  
12 Q And what do you recall about that?  
13 A That was as the result of what they called the SEP  
14 agreement with the EPA to kind of our I'll call it  
15 penance for mislabeling some engines.  
16 Q What was your involvement in the SEP?  
17 A My involvement was only from a facilities  
18 standpoint, where I was -- I consulted with the  
19 designer, who is not me, in terms of what they  
20 could do and what they couldn't do and how they --  
21 how, in general, they needed to design their  
22 system.  
23 Q Who was the designer?  
24 A Another guy at Fairbanks. I don't recall his name  
25 right now.



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1 Q Did he have a title?

2 A Yes, he did. He would have worked for an engineer

3 named Kyle Padfield. Kyle would not have been the

4 designer, but this guy worked for him. I believe

5 his first name was John, but I don't remember his

6 last name.

7 Q And when did your involvement, interaction, if you

8 will, with the design aspects of the

9 aftertreatment for the SEP begin?

10 A I'm thinking that was, like, 2012.

11 Q Do you recall when you first learned of the SEP?

12 A No, I don't.

13 Q Were you involved in any discussions relative to

14 AVL making a capital outlay to put aftertreatment

15 on any of the cells?

16 A No. I was not.

17 Q Did you have any interactions with

18 George Whittier?

19 A Very rarely.

20 Q To whom did you report directly while at FME?

21 A I reported to Don Lang at one point,

22 Albert Provenzano at another point, and

23 Mike Perry.

24 Q Do you recall Mr. Whittier sharing with you at any

25 time frustration relative to the AVL relationship?

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1 A I don't remember any direct communications from

2 George Whittier about that.

3 Q Do you recall any communications about the

4 potential of cancelling the relationship with AVL?

5 A No.

6 Q Mr. Niehaus, you have Plaintiff's Exhibit 26

7 previously marked. Do you recognize receiving

8 this e-mail? You're a copied to addressee?

9 A No. I don't remember receiving it.

10 Q In the third paragraph, there's a reference to

11 George Whittier saying to Ray Corbin We aren't at

12 a point of cancelling this whole business deal,

13 but that continued frustrations on my part make me

14 at least see that this is a possibility on the

15 horizon?

16 A There was some communication between Pete DiCaro

17 and myself about frustration with AVL, but it was

18 more -- it was more at their pushing to expand.

19 Q Were you frustrated about it, or was Pete

20 frustrated about it?

21 A No. I could care less.

22 Q So Pete expressed frustration about AVL expansion?

23 A Yeah. I remember -- I distinctly remember, not

24 conversations specifically, but the tenor of

25 conversations about AVL coming in where they first

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1 started with two test stands, all of a sudden they

2 wanted four, all of a sudden they wanted six, and

3 it was, like, we just didn't know where they were

4 going to go. They kept -- it kept seeming like

5 they were going to expand to take over the

6 entirety of the OP. I have no idea what their

7 business plans were.

8 Q Do you know one way or the other what the master

9 agreement provided?

10 A No, I don't. I probably had a copy at some point

11 but probably didn't read it.

12 (Exhibit No. 85 marked for

13 identification)

14 Q You have Plaintiff's Exhibit 85. Do you recognize

15 this e-mail?

16 A Yes, I do.

17 Q It begins with the second e-mail of June 21, 2011

18 at 10:09 a.m. from you to Albert Provenzano and

19 others. Correct?

20 A Yes.

21 Q And you say I have had Pat -- is it Giles or

22 Giles, I'm sorry?

23 A Giles.

24 Q G-i-l-e-s -- lock out the tower water feed valves

25 to the AVL engines on OP test stands 8 and 10.

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1 Why did you have Pat do that?

2 A I was instructed to do that.

3 Q Who instructed you to do that?

4 A I believe it was Pete DiCaro.

5 Q Did you understand why he was instructing you to

6 do it?

7 A I do not recall the reason why at this point in

8 time.

9 Q At the time you directed Pat to do that, was AVL

10 running engines on stands 8 and 10?

11 A I think they had generally ceased running but

12 could run. I don't remember it being a surprise.

13 I think when I went down there with Pat to have

14 him put the locks on that AVL knew that this was

15 coming.

16 Q So you were personally present with Pat when these

17 locks were placed on?

18 A I was. I instructed him where to put the locks.

19 Q At the time you were physically present there to

20 put the locks on, was AVL testing an engine at

21 that time?

22 A No, they weren't.

23 Q Had they tested an engine at any time that day?

24 A Not to my knowledge.

25 Q How about the day prior; had AVL run those engines

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1 on those test stands the day prior?  
2 A I don't know.  
3 Q Would your daily fuel burn readings be an  
4 indication of whether those test stands ran or  
5 not?  
6 A They should indicate that. If they had run, there  
7 would be fuel usage.  
8 Q Would there be any other logbook I could look at  
9 that would tell me one way or the other whether  
10 those engines were run on either June 20th or  
11 21st?  
12 A No. It would be in what we call the daily checks.  
13 Q And what are the daily checks?  
14 A That's the log sheet that the guys go around the  
15 plant and they log various meters.  
16 Q And that's the same document you described earlier  
17 tonight?  
18 A Yes.  
19 Q Mr. Niehaus, you have Plaintiff's Exhibit 37  
20 previously marked. Now, I know you weren't on the  
21 last e-mail in this chain, but I see you sent the  
22 June 29, 2011 e-mail?  
23 A Yes.  
24 Q Do you recall that one?  
25 A Yes.

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1 Q What did this pertain to?  
2 A AVL had a Cat C280 engine operating on test stand  
3 7. And I don't know -- I don't remember the exact  
4 situation, but this would have locked out and shut  
5 off the water supply to that test stand, so that  
6 they could not run the engines.  
7 Q Do you know why that was being done at this time?  
8 A I do not remember.  
9 Q Was the engine actually running at the time you  
10 secured it?  
11 A No.  
12 Q How long prior to the time you secured it was it  
13 last run?  
14 A I don't know. I would have, in any case, when  
15 locking out -- when doing one of these lockouts on  
16 an engine, I would have gone to AVL and told them  
17 what I had to do and had them shut down the engine  
18 in a controlled manner before I did that.  
19 Q Did AVL cooperate with you when you made such  
20 requests?  
21 A Every time.  
22 (Exhibit No. 86 marked for  
23 identification)  
24 Q You have Plaintiff's Exhibit 86. It's an e-mail  
25 chain, July 7, 2010, from John Scott of AVL to

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1 you, correct? That's the first e-mail?  
2 A Yes.  
3 Q What subject matter does this relate to?  
4 A Let me review this for a minute.  
5 Q Sure. Take your time.  
6 (Witness examines document)  
7 A This has to do with providing power for a steam  
8 generator that we installed for -- AVL purchased a  
9 steam generator. We installed the power for it.  
10 And this would be for test stand 10 -- 9 and 10.  
11 Q Why was a steam generator needed?  
12 A They needed to be able to do environmental  
13 testing, which needs a different humidity and  
14 temperature levels, and they used the steam, in  
15 addition to cooling the intake, they either heat  
16 it too high and then cool it, or they overcool it  
17 and then reheat it. It's just a control  
18 methodology.  
19 Q Okay. If you could refer to the second e-mail on  
20 the first page, earlier in time, obviously, from  
21 you to Pete DiCaro and others, July 6, 2010. Do  
22 you see that?  
23 A Yes.  
24 Q Paragraph 3 refers to work being completed before  
25 Cat arrives on Monday. Do you see that?

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1 A Yes.  
2 Q Were you kept advised by AVL of the Cat testing  
3 that was taking place?  
4 A Sometimes. We had a couple engines that showed up  
5 unknown. Just all of a sudden, poof, they were  
6 there.  
7 Q Were you kept abreast by AVL of specifically what  
8 testing regimen was being undertaken with respect  
9 to any particular Cat or EMD engine?  
10 A No.  
11 (Exhibit No. 87 marked for  
12 identification)  
13 Q You have Plaintiff's Exhibit 87. Do you recognize  
14 this document?  
15 A Yes, I do.  
16 Q What is this?  
17 A This is a list of things that I needed to do in  
18 order to -- or a list of items that needed to  
19 happen in order for us to apply for our next  
20 construction permit for our air permit.  
21 Q So lead person, Ted Niehaus, was that -- anything  
22 following your name, is that an action item for  
23 you?  
24 A Yeah, it should be all the -- first four action  
25 items should be mine.

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1 Q Because on the second page, at the top, is  
2 Joe Eves, correct?  
3 A Correct.  
4 Q So he had action number 5?  
5 A Correct.  
6 Q Who drafted this?  
7 A Good question. I don't know.  
8 Q There's a reference under action item 1, at the  
9 end of that indented paragraph, to consolidated  
10 test engine parameters 3.22.11.XLS?  
11 A Yeah. So my goal, under action item 1, was to  
12 guess at what engines would be tested on what test  
13 stands and what their ranges were. So on an OP  
14 engine, they range from 6 cylinders to  
15 12 cylinders. On an ALCO engine, they range from  
16 12 to 18. And on a PA6, they range from 12 to 20.  
17 So my goal here was just to say we have a test  
18 floor, and I'm going to divide up the test floor  
19 in these -- in this particular -- in this  
20 particular manner, some arbitrary manner, which I  
21 would choose myself, and identify what engines  
22 would be tested in those locations, if we were  
23 going to test them, based upon the facilities that  
24 were available and whether or not that was  
25 reasonable or not.

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1 Q Was this focused solely on FME engine testing?  
2 A Yes.  
3 Q Did this include any AVL testing at all?  
4 A I do not believe so.  
5 Q So this consolidated test engine spreadsheet,  
6 where would that reside at FME?  
7 A That's a good question. It was an Excel file. It  
8 will probably be buried in some e-mails.  
9 Q Would you have those e-mails?  
10 A Yes.  
11 MR. HERRMANN: If we can break for  
12 a minute, I would like to confer just  
13 shortly, and then --  
14 MR. DeGEORGE: Okay. Great.  
15 MR. HERRMANN: -- we should be  
16 close to done.  
17 (A recess was taken)  
18 MR. HERRMANN: Thank you.  
19 Mr. Niehaus, I currently have no further  
20 questions.  
21 THE WITNESS: Okay.  
22 MR. DeGEORGE: I have no questions.  
23 (Adjourning at 5:47 p.m.)  
24  
25

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1 STATE OF WISCONSIN )  
2 COUNTY OF DANE ) ss.  
3 I, SARAH FINLEY PELLETTER, a Registered  
4 Professional Reporter and Notary Public duly  
5 commissioned and qualified in and for the State of  
6 Wisconsin, do hereby certify that pursuant to notice,  
7 there came before me on the 18th day of  
8 November 2015, at 3:52 in the afternoon, at the  
9 offices of Whyte Hirschboeck Dudek, S.C.,  
10 Attorneys at Law, 33 East Main Street, Suite 300, in  
11 the City of Madison, County of Dane, and State of  
12 Wisconsin, the following named person, to wit:  
13 THEODORE W. NIEHAUS, who was by me duly sworn to  
14 testify to the truth and nothing but the truth of his  
15 knowledge touching and concerning the matters in  
16 controversy in this cause; that he was thereupon  
17 carefully examined upon his oath and his examination  
18 reduced to typewriting with computer-aided  
19 transcription; that the deposition is a true record  
20 of the testimony given by the witness; and that  
21 reading and signing was not waived.  
22 I further certify that I am neither  
23 attorney or counsel for, nor related to or employed  
24 by any of the parties to the action in which this  
25 deposition is taken and further that I am not a

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1 relative or employee of any attorney or counsel  
2 employed by the parties hereto or financially  
3 interested in the action.  
4 In witness whereof I have hereunto set my  
5 hand and affixed my notarial seal this 23rd day of  
6 November 2015.  
7  
8 Notary Public, State of Wisconsin  
9 Registered Professional Reporter  
10 My commission expires  
11 July 10, 2016  
12  
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